

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	
)	CRIMINAL NO. 1:10-CR-313
JOSHUA BEHROUZ NABATKHORIAN,)	
)	
Defendant.)	

GOVERNMENT'S RESPONSE TO DEFENSE MOTION
TO DISMISS INDICTMENT

The United States of America, by and through its undersigned counsel, moves this Court to deny the defendant's motion to dismiss the Indictment.

LEGAL STANDARD

In *United States v. Pleasant*, 125 F. Supp. 2d 173, 176 (E.D.Va. 2000) this Court held that "[a] count is not duplicitous, however, merely because it alleges alternative means of completing a single offense." (Citations removed).

ARGUMENT

The Indictment in this case charges a single offence, the use of a communication device to attempt to entice a minor to engage in sexual activity for which anyone could be charged with a crime. The fact that the defendant is charged with attempting to commit acts that would have violated multiple statutes does not make this count duplicitous. This is especially true given the large amount of overlap between the two Virginia statutes listed in the Indictment.

In *Pleasant*, the defendant was charged in a single count with carrying or using a firearm during and in relation to a crime of violence or a drug-trafficking crime or possessing a firearm in

furtherance of any crime. *Id.* This court noted that the single count “delineate[d] two quite different, albeit related, proscriptions.” *Id.*

In the case at bar, there is only a single prescription, using a communication device to entice a minor to commit an illegal sex act. Whether the sexual act is illegal under one Virginia statute or another, or both, or was an attempt to commit one, the other or both, does not somehow create a series of new offenses. Instead, it is merely alternate means of violating the single proscription.

CONCLUSION

The defendant’s motion to dismiss the Indictment should be denied. The Indictment properly includes several Virginia statutes that proscribe the attempted conduct and as such provide alternative means of violating Title 18, United States Code, Section 2422(b). The single count Indictment is not duplicitous.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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